

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-216620.2

DATE: January 4, 1985

MATTER OF: Freund Precision, Inc.--
Reconsideration

DIGEST:

Request for reconsideration is denied where the protester has not shown that prior decision was erroneous as to fact or law.

Freund Precision, Inc. (FPI), requests reconsideration of our decision in Freund Precision, Inc., B-216620, Oct. 23, 1984, 84-2 C.P.D. ¶ 456, which dismissed its protest against the award of a contract to United Terex (United) by the Navy Aviation Supply Office (Navy) under invitation for bids (IFB) No. N00383-84-B-0615. We deny the request.

In its original protest, FPI contended that United's bid price was too low to successfully perform the contract and that the Navy awarded the contract without conducting a preaward survey or an equal opportunity compliance review as required by Federal Acquisition Regulation §§ 52.222-24 and 52.222-26, 48 Fed. Reg. 42,102, 42,171 (1983) (to be codified at 48 C.F.R. §§ 52.222-24 and 52.222-26).

We dismissed the protest because whether the bid price is so low that the bidder will not be able to perform the contract satisfactorily, as well as the bidder's ability to comply with the IFB's equal opportunity clause, concerns the bidder's responsibility. Further, we stated that the contracting officer must determine the bidder's responsibility before award and may conduct a preaward survey to help do so, but that a preaward survey is not a legal prerequisite to an affirmative determination of responsibility. We also stated that we will not review a decision concerning an affirmative determination of responsibility absent a showing that the contracting officer acted fraudulently or in bad faith or that definitive responsibility criteria have not been met. FPI did not present such a case.

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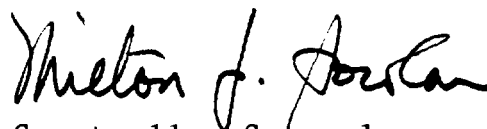
In its request for reconsideration, FPI contends that we erroneously concluded that an award could be made without an equal opportunity compliance review. In support of its position, FPI cites the following provision of FAR (§ 52.222-24):

"PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE
REVIEW
(APR 1984)

"An award in the amount of \$1 million or more will not be made under this solicitation unless the offeror and each of its known first-tier subcontractors (to whom it intends to award a subcontract of \$1 million or more) are found, on the basis of a compliance review, to be able to comply with the provisions of the Equal Opportunity clause of this solicitation."

We have been advised by the Navy that the contracting officer received both an oral and written report from an on-site equal opportunity compliance officer prior to the award to United. Therefore, the requirements of the above clause were fulfilled.

The request for reconsideration is denied.

for 
Comptroller General
of the United States